

ORIGINAL

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Boyd Mobassa h
 (Last) (First) (Initial)

Prisoner Number P-05952

Institutional Address Folsom State Prison; P.O. Box 950
Folsom, California 95763

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

IN RE: Mobassa Boyd
 (Enter the full name of plaintiff in this action.)

vs.

Matthew Kramer, Warden

(Enter the full name of respondent(s) or jailor in this action)

CV 08 3005

Case No. _____
 (To be provided by the clerk of court)

PETITION FOR A WRIT
 OF HABEAS CORPUS

E-filing

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland): Santa Rita County Jail
5325 Broder Blvd.
Board of Parole Hearings Dublin, California 94568

Court

Location

(b) Case number, if known _____

(c) Date and terms of sentence 10-23-2007

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: Folsom State Prison; P.O. Box 950

Address: Folsom, California 95763

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

915, 992, 999.

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☐ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Parole Hearing Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☐ No ☒

(b) Preliminary hearing Yes ☐ No ☒

(c) Time of plea Yes ☐ No ☒

(d) Trial Parole hearing Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☐ No ☒

(g) Other post-conviction proceeding Yes ☐ No ☒

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 2007 Result: Denied Petition

Supreme Court of California Yes ☒ No ☐

Year: 2008 Result: Denied Petition

Any other court Yes ☐ No ☒

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes ☒ No ☐

2 (c) Was there an opinion? Yes ☐ No ☒

3 (d) Did you seek permission to file a late appeal under Rule 31(a)? N/A

4 Yes ☐ No ☐

5 If you did, give the name of the court and the result: N/A

6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes ☐ No ☒

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding: Attach extra paper if you need more space.

18 I. Name of Court: N/A

19 Type of Proceeding: N/A

20 Grounds raised (Be brief but specific):

21 a. N/A

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

III. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific): _____

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

IV. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific): _____

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No ☒

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

Claim One: My right to Present my witness. Namely, my grand mother was violated by my Attorney In that, I'd asked said Esq.= Attorney too interview and Personally Subpoena said witness. Secondly my right to Postpone my hearing was violated thus, my defense was never presented.

Supporting Cases: Duty to Investigate It is ineffective assistance of counsel to fail to adequately Investigate the case. Defense counsel must explore Potentially meritorious defenses. Even if the evidence is not later introduced for tactical reasons.

(In re Cordero, 46 Cal. 3d 161, 181, 249 Cal. Rptr. 342, 756 P.2d 1370 (1988)).

Supporting cases

Civ. cd. § 3532. Idle acts. "THE LAW NEITHER DOES NOR REQUIRE IDLE ACTS.";

MILTON V. MORRIS (Cite as:

767 F. 2d 1443 [4] Crim. Law, 110 Fed 641, 12(1) THE STATE MAY NOT UNREASONABLY HINDER A DEFENDANT'S EFFORTS TO PREPARE HIS OWN DEFENSE.

Supporting Facts: Albeit, the entire pre Hearing too, and including Revocation Hearing was nothing short of an complete shame and a farce See/Exhibit A.) for Details.

Also, See/Exhibit Regarding Germane, and material indicia. I also Request that this Court Shall order that the Relevant tape Recording of the herein entailed Proceedings (i.e., my Revocation Hearing.) Be made available to me

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See next Page 6(a) and 6(B)

6
7 Supporting Facts: See next Page 6(a) and 6(B)

8
9
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11 Claim Two: N/A

12
13 Supporting Facts:

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15
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17 Claim Three: N/A

18
19 Supporting Facts:

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 N/A

1 List, by name and citation only, any cases that you think are close factually to yours so that they
 2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
 3 of these cases:

4 (In re Cordero, 46 Cal. 3d 161, 181, 249 Cal. Rptr. 342, 756 P.2d
 5 1370 (1988). Milton V. Morris, 767 F. 2d 1443.

6
 7 Do you have an attorney for this petition?

Yes Mr. Mark D. Eibert

No ☒

8 If you do, give the name and address of your attorney:

9 I shall request Mr. Mark D. Eibert, Attorney at Law
entitled in Exhibit B.) to deal with this Post Office Box 1126
Half Moon Bay, CA 94019-1126

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
 11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
 13 Executed on 6-17-2008

14 Date

Mark D. Eibert

Signature of Petitioner

15
 16
 17
 18
 19
 20 (Rev. 6/02)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 9

Date: November 27, 2007 Hon. LARRY GOODMAN, Judge

Fil R. Cruz, Dep. Clk.
Not Reported, Reporter

IN RE: MOBASSA K. BOYD
Petitioner

Counsel appearing: No Appearance
for Petitioner

vs.

Counsel appearing: No Appearance
for Respondent

PEOPLE OF THE STATE OF CALIFORNIA

Respondent

Nature of Proceedings: EX PARTE PETITION FOR WRIT OF HABEAS CORPUS

Case No: 132404
PFN: AYB907
CEN: 8215334

This Court having reviewed the Petition for Writ of Habeas Corpus filed on November 27, 2007 by Petitioner Mobassa K. Boyd, NOW HEREBY ORDERS:

Petition for writ of habeas corpus is denied. The petition fails to state a prima facie case to entitle petitioner to habeas relief.

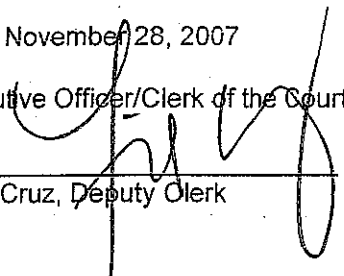
CLERK'S CERTIFICATE OF MAILING (CCP 1013a)

I certify that the following is true and correct: I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1225 Fallon Street, Oakland, California. I served this ORDER REGARDING EX PARTE PETITION FOR WRIT OF HABEAS CORPUS, by placing a copy in an envelope addressed as shown below and then by sealing and placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

Mobassa K. Boyd
PFN # -AYB907
5325 Broder Blvd.
Dublin, CA 94568

Date: November 28, 2007

Executive Officer/Clerk of the Court

By: 
Fil R. Cruz, Deputy Clerk

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re MOBASSA BOYD on Habeas Corpus.

A120067

Alameda County Sup. Ct. No. 132404

BY THE COURT:*

The petition for writ of habeas corpus is denied.

FILED
DEC 21 2007
COURT OF APPEAL - FIRST APP. DIST.
By **DIANA HERBERT**
DEPUTY

Date DEC 21 2007

JONES, P.J. P.J.

* Before Jones, P.J., Simons, J. and Needham, J.

S159993

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MOBASSA BOYD on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

APR - 9 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

Name Mr. Mobassa BoydAddress Deuel Vocational Institution PrisonP.O. Box 600Tracy, California 95378-0600CDC or ID Number P05952SUPREME COURT
FILED

JAN 16 2008

Frederick K. Onirich Clerk

Supreme Court of
California

(Court)

Deputy

Mr. Mobassa Boyd

Petitioner

vs.

State of California

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

S159993

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 9

Date: November 27, 2007 Hon. LARRY GOODMAN, Judge

Fil R. Cruz, Dep.Clk.
Not Reported, Reporter

IN RE: MOBASSA K. BOYD
Petitioner

Counsel appearing: No Appearance
for Petitioner

vs.

Counsel appearing: No Appearance
for Respondent

PEOPLE OF THE STATE OF CALIFORNIA

Respondent

Nature of Proceedings: EX PARTE PETITION FOR WRIT OF HABEAS CORPUS

Case No: 132404
PFN: AYB907
CEN: 8215334

This Court having reviewed the Petition for Writ of Habeas Corpus filed on November 27, 2007 by Petitioner Mobassa K. Boyd, NOW HEREBY ORDERS:

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Mobassa K. Boyd
PFN # -AYB907
5325 Broder Blvd.
Dublin, CA 94568

Date: November 28, 2007

Executive Officer/Clerk of the Court

By: 
Fil R. Cruz, Deputy Clerk

COPY

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FIRST APPELLATE DISTRICT
DIVISION FIVE

In re MOBASSA BOYD on Habeas Corpus.

A120067

Alameda County Sup. Ct. No. 132404

BY THE COURT:*

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Date DEC 21 2007

JONES, P.J.

P.J.

* Before Jones, P.J., Simons, J. and Needham, J.

FILED

DEC 21 2007

COURT OF APPEAL - FIRST APP. DIST.
DIANA HERBERT

By

DEPUTY

This petition concerns:

- ☐ A conviction
 ☒ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: Mr. Mobassa Boyd
2. Where are you incarcerated? Level Vocational Institution Prison
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment..

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

X Felon in the Possession of an Fire Arm.

- b. Penal or other code sections: 12021(e)

- c. Name and location of sentencing or committing court: Alameda County Superior Court.

- d. Case number: 132404

- e. Date convicted or committed: _____

- f. Date sentenced: 6-30-98

- g. Length of sentence: Six years

- h. When do you expect to be released? Eight months

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

Can not now Recall...

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

My Right to Present my witness. Namely, my Grand mother was violated by my Attorney. In that, I'd asked

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction; describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Albert, the entire Pre Hearing too, and including Revocation Hearing was nothing short of an complete shame and a farce See/Exhibit A.) for Details.

Also, see/Exhibit C.) Regarding Germane, and material indicia. I also Request that this court Shall order that

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Civ. C.d. § 353a. I die acts. "THE LAW NEITHER DOES NOR REQUIRE IDLE ACTS." MILTON V. MORRIS (Cite as: 767 F.2d 1443 [4] Crim. Law 1102 641.12(1)

1 Grounds Cont.: Hearing was
2 Violated. thus, my Defense
3 was never Presented.

4
5 b. Sup. Cases: Duty to Investigate:
6 It is ineffective assistance of Counsel
7 to fail to adequately Investigate
8 the case. Defense counsel must
9 explore Potentially meritorious
10 Defenses. Even if the evidence

1 b. Sup. Cases:

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Is not later Introduced for tactical
Reasons. (In re Cordero, 46 Cal. 3d 161, 181,
249 Cal. Rptr. 342, 756 P. 2d 1370 (1988)).

PRAYER

That this Court Order for me,
too be Granted an Fair Hearing
and that this Court Order
that I, be promptly given an
Complete copy of the tape
Recording of Said Hearing.

7. Ground 2 or Ground _____ (if applicable):

MC-275

Said Esq. = Attorney too interview and
Personally Subpoena said witness.
Secondly my Right to Postpone my.

a. Supporting facts:

The Relevant tape Recording of the herein
entailed proceedings (i.e., my Revocation
Hearing.) Be made available to me.

b. Supporting cases, rules, or other authority:

THE STATE MAY NOT UNREASONABLY
HINDER A DEFENDANT'S EFFORT'S
TO PREPARE HIS OWN DEFENSE.

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

SEE / Exhibit B.)

b. Result

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Can not Recall

9. Did you seek review in the California Supreme Court? ☒ Yes ☐ No. If yes, give the following information:

a. Result SEE / Exhibit B.)

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

I was not on Parole at said time...

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15. MC-275

13. a. (1) Name of court: SEE / Exhibit B.)

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page: _____

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result: _____

SEE / Exhibit B.)

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

N/A

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

I shall Request Esq., entailed in Exhibit B.) to Deal With this.

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

SEE / Exhibit B.)

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 1-9-2008

Malissa Boud
(SIGNATURE OF PETITIONER)

Exhibit A.

Question to Grand Mother

1 Have i ever abused or disrespect you.?

2

3 Have i ever stole from you.?

4

5 Do i get mad at you if i ask you
6 for money and you don't have it
7 to give me.?

8

9 When i visit your home do i come
10 over disrespecting and threatening
11 you or my Dad.?

12

13 Does my Dad drink and when he
14 does do he get angry fast.?

15

16 Does my Dad get a attitude when
17 he starts drinking how much do
18 he drink a day.?

19

20 Have you ever heard me disrespect
21 my dad before.?

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Question TO Dad

1 Was you drinking the day you
2 Said i threaten you.?

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4 Why do you always threaten me
5 by saying I'll call your parole
6 officer on you.?

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8 Have you had anything to
9 drink today.?

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Exhibit B.)

Westlaw

455 F.3d 897

455 F.3d 897, 06 Cal. Daily Op. Serv. 5434, 06 Daily Journal D.A.R. 8093
(Cite as: 455 F.3d 897)

Page 1

Boyd v. Newland
C.A.9 (Cal.) 2006.United States Court of Appeals Ninth Circuit
Mobassa BOYD, Petitioner-Appellant,
v.
Anthony C. NEWLAND, Warden,
Respondent-Appellee.

No. 03-17098.

Argued and Submitted Oct. 4, 2004.
Filed Dec. 29, 2004.
Amended June 26, 2006.

Background: State prisoner filed petition for writ of habeas corpus, challenging conviction of unlawfully possessing a firearm after having previously suffered a juvenile adjudication for a felony, and unlawfully possessing a sawed-off shotgun. The United States District Court for the Northern District of California, Ronald M. Whyte, J., denied petition, and petitioner appealed.

Holding: The Court of Appeals, Graber, Circuit Judge, held that:

- (1) without entire voir dire transcript, California appellate courts could not have evaluated relevant circumstances surrounding peremptory strike of African-American juror, as required by *Batson*, but
- (2) state court's use of petitioner's nonjury juvenile adjudication to increase his sentence from three to six years was not contrary to, or unreasonable application of, clearly established federal law.

Affirmed in part, and reversed and remanded in part with instructions.

Opinion, 393 F.3d 1008, amended.

*899 Mark E. Elbert, Half Moon Bay, CA, for the petitioner-appellant.
Glenn K. Pruden, Deputy Attorney General, State of California, San Francisco, CA, for the respondent-appellee.

Appeal from the United States District Court for the Northern District of California, Ronald M. Whyte, District Judge, Presiding. D.C. No. CV-00-21287-RMW.

Before: RICHARD D. CUDAHY, P. SUSAN P. GRABER, and RAYMOND C. FISHER, Circuit Judges.

FN* The Honorable Richard D. Cudahy, Senior Judge, United States Court, of Appeals for the Seventh Circuit, sitting by designation.

ORDER AND AMENDED OPINION GRABER, Circuit Judge.

ORDER

The Opinion filed on December 29, 2004, slip op. at 17513, and appearing at 393 F.3d 1008 (9th Cir.2004), is amended. The Amended Opinion will be filed contemporaneously with this Order.

With this amendment, the panel has voted to deny the petition for rehearing and petition for rehearing en banc. Judges Graber and Fisher have voted to deny the petition for rehearing en banc and Judge Cudahy has so recommended.

The full court has been advised of the petition for rehearing en banc and no *990 judge of the court has requested a vote on it.

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455 F.3d 897

455 F.3d 897, 06 Cal. Daily Op. Serv. 5434, 06 Daily Journal D.A.R. 8093
(Cite as: 455 F.3d 897)

Page 2

The petition for rehearing and petition for rehearing en banc are DENIED. Further petitions for rehearing or petitions for rehearing en banc may be filed.

OPINION

The California courts denied a *Batson*^{FN1} motion made by Petitioner Mobassa Boyd and denied his request for a free transcript of the entire voir dire for use on appeal. We must ask whether those rulings were contrary to, or unreasonably applied, clearly established federal law as determined by the Supreme Court. In an earlier decision in this case, we answered "no." *Boyd v. Newland*, 393 F.3d 1008 (9th Cir.2004). In response to a petition for rehearing and in light of recent Supreme Court cases clarifying *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), we conclude that our earlier analysis was flawed. We now hold that the California appellate courts violated clearly established federal law by denying Petitioner's habeas petition because, without an entire voir dire transcript, those courts could not evaluate the relevant circumstances surrounding the contested strike, as *Batson* requires. In that respect we reverse and remand with instructions to grant the petition for a writ of habeas corpus.

FN1. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

Petitioner also argues that the California courts erred by enhancing his sentence because of a nonjury juvenile adjudication. As in our earlier decision, we disagree and, in this respect, affirm.

FACTUAL AND PROCEDURAL HISTORY

Petitioner Mobassa Boyd is African-American. He was charged in California with unlawfully possessing a firearm after having previously suffered a juvenile adjudication for a felony, Cal.Penal Code § 12021(e), and with unlawfully possessing a sawed-off shotgun, *id.* § 12020(a)(1). During voir dire, the prosecutor used a peremptory

strike to excuse an African-American prospective juror. Petitioner's counsel made a *Batson* motion, asserting that the strike was race-biased. FN2. At the time of the disputed peremptory challenge, another African-American potential juror had been stricken for cause; two other African-Americans remained as potential jurors, and the prosecutor had used two other peremptory challenges on non-African-American jurors. The trial court denied the motion, finding that Petitioner's "showing falls short of showing a prima facie case" of racial bias in the prosecutor's use of the peremptory challenge.

FN2. Petitioner's counsel challenged the peremptory strike under *People v. Wheeler*, 22 Cal.3d 258, 148 Cal.Rptr. 890, 583 P.2d 748 (1978). *Wheeler* prohibits, under the California Constitution, the use of racially motivated peremptory challenges. *Id.* at 761-62. A *Wheeler* motion serves as an implicit objection under *Batson*, *People v. Keenan*, 31 Cal.4th 93, 2 Cal.Rptr.3d 186, 72 P.3d 1166, 1187-88 (2003). So Petitioner preserved his federal constitutional claim. Accordingly, we refer to counsel's objection as a *Batson* motion.

The jury that eventually was empaneled convicted Petitioner. Petitioner waived his right to have a jury determine the truth of his prior juvenile adjudication. The trial court found the juvenile adjudication to be true and, accordingly, increased Petitioner's sentence from three to six years. Cal.Penal Code §§ 667(d)(3), 1170.12(b)(3).

Petitioner filed three requests to supplement the record to include the entire voir dire transcript. The California Court of Appeal granted Petitioner's requests in *901 part and required that he be provided the voir dire of the excused African-American juror plus his counsel's argument under *Batson*. But the court of appeal denied Petitioner's requests for the entire voir dire transcript because it concluded that he did not comply with a California local rule that requires a defendant to "establish with some certainty how the

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the basis of all the facts, some of which are impossible for the defendant to know with certainty that the challenge was more likely than not the product of purposeful discrimination. Instead, a defendant satisfies the requirements of *Batson*'s first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.

Id. at 2417.

On the same day, the Supreme Court also decided *Miller-El II*. In *Miller-El II*, the Court used comparative juror analysis at the appellate level to determine whether the prosecution had been motivated by racial bias in exercising its peremptory strikes. 125 S.Ct. at 2325-38. "Comparative juror analysis" refers, in this context, to an examination of a prosecutor's questions to prospective jurors and the jurors' responses, to see whether the prosecutor treated otherwise similar jurors differently because of their membership in a particular group. See, e.g., *Id.* (engaging in comparative juror analysis); *Kilgelder v. Hall*, 391 F.3d 1029, 1049 n. 9 (9th Cir.2004) (conducting a comparative juror analysis to discern whether differing life experiences justified the use of a peremptory strike against an African-American juror in a case in which a prima facie showing had been made); *cert. denied*—U.S.—, 125 S.Ct. 2668, 162 L.Ed.2d 895 (2005). *Miller-El II* made clear that comparative juror analysis is an important tool that courts should utilize in assessing *Batson* claims: "More powerful than these bare statistics [revealing that the prosecution struck 91% of black potential jurors], however, are side-by-side comparisons of some black venire panelists who were struck and white panelists allowed to serve." 125 S.Ct. at 2325.

Both *Johnson* and *Miller-El II* were decided after *Petitioner's* conviction became final. The government has argued that even if *Miller-El II* requires or encourages comparative juror analysis on appeal, its rule cannot apply in the case at hand under *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). *Teague* held that federal habeas corpus petitioners cannot rely on new constitutional rules of criminal procedure that

took effect after their convictions became final. Id. at 310, 109 S.Ct. 1060. But because the government argues that *Petitioner* is requesting the benefit of a rule decided after his original appeal was decided, and thus after his conviction became final, we must "904 address *Teague* before turning to the merits of his claim. *Casper v. Bohlen*, 510 U.S. 383, 389, 114 S.Ct. 948, 127 L.Ed.2d 236 (1994). We are convinced that *Johnson* and *Miller-El II* merely clarify *Batson* and do not establish new rules of criminal procedure.

FN5. There was no majority opinion in *Teague*. However, the Court has treated Justice O'Connor's plurality opinion as embodying its holding. See, e.g., *Doyle v. Cain*, 533 U.S. 636, 665, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001).

Johnson discusses the standard that *Batson* first established. The *Johnson* opinion relies almost exclusively on the wording used in the *Batson* opinion; we have concluded that *Johnson* explains *Batson*, see *Yee v. Dincorn*, 441 F.3d 831, 857 n. 9 (9th Cir.2006) (noting that *Johnson* is "an example of the Supreme Court's consistent interpretation of *Batson* to date" but not deciding the *Teague* issue), and the state does not contend that *Johnson* established a new rule, see *Casper*, 510 U.S. at 389, 114 S.Ct. 948 (noting that if the state does not argue that *Teague* applies, a court need not consider it).

Neither does *Miller-El II* create a new rule of criminal procedure. Instead, it simply illustrates the means by which a petitioner can establish, and should be allowed to establish, a *Batson* error. See *Murphy v. Dreike*, 416 F.3d 427, 439 (5th Cir.2005) (stating that in *Miller-El II*, the Court did not announce "any new elements or criteria for determining a *Batson* claim" but merely applied *Batson* in the circumstances of that particular case), *cert. denied*—U.S.—, 126 S.Ct. 1028, 163 L.Ed.2d 868 (2006). *Miller-El II* fits within the *Batson* framework, which provides that "the prosecutor's questions and statements during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory

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purpose." *Batson*, 476 U.S. at 97, 106 S.Ct. 1712. *Batson* itself required courts to consider the "locality of the relevant facts" and "all relevant circumstances" surrounding the peremptory strike. Id. at 94, 96, 106 S.Ct. 1712. Moreover, we are persuaded that the opinion's support of comparative juror analysis on appeal did not create a new rule because the Supreme Court applied the rule to *Miller-El* himself. The *Teague* rule applies to the Supreme Court as well as to lower courts. See *Swayer v. Smith*, 497 U.S. 227, 239, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990) (affirming the lower court's refusal to apply the holding of one of the Court's previous opinions to a defendant because the rule established in that case was new). Therefore, if the Supreme Court's endorsement of comparative juror analysis on appeal constituted a new procedural rule, the Court would not have applied that rule to *Miller-El*, whose case came before the Court on an appeal from a denial of habeas corpus. *Miller-El v. Dreike*, 361 F.3d 849 (5th Cir.2004). Because the Court did engage in extensive comparative juror analysis, we can infer that *Miller-El II* must only have clarified the extant *Batson* three-step framework. See *Prazer v. South Carolina*, 430 F.3d 696, 704-06 (4th Cir.2005) (concluding that an earlier Supreme Court case did not establish a new rule because, procedurally, the case reached the Court on a challenge to a denial of habeas corpus but the Court addressed the merits of the petitioner's claim and remanded for further proceedings, which it could not have done under *Teague* if it were creating a new rule).

Accordingly, we now turn to the merits of *Petitioner's* *Batson* claim. In order to determine, at the first *Batson* step, whether racial bias motivated a prosecutor's decision to remove a potential juror, a court must consider the "totality of the relevant facts" and "all relevant circumstances" surrounding the peremptory strike. *Batson*, 476 U.S. at 94, 96, 106 S.Ct. 1712. Thus, when a defendant raises a plausible *Batson* claim, a court must analyze the context in which the contested peremptory strike arose. See *Johnson*, 905 125 S.Ct. at 2419 (reversing the state court's denial of habeas corpus because all three of the African-American prospective jurors were stricken and the state court judges found the circumstances suspicious). In our

earlier *Boyd* opinion, we misread *Batson* to require more certainty of discriminatory motive.

In this case, it is clear that the *Petitioner* raised at least a plausible *Batson* claim and that contextual analysis is therefore appropriate. After the prosecutor used a peremptory challenge to strike an African-American juror (*Petitioner* is of the same race), *Petitioner's* counsel objected, arguing that this was the second African-American juror removed from the jury pool (the first having been removed for cause), there remained only two potential African-American jurors in the pool, and nothing in the struck juror's voir dire responses indicated a legitimate basis for removal. These facts, though not alone sufficient to establish a prima facie case, suggest that *Petitioner's* *Batson* claim was at least plausible, and the court should consider context in order to determine whether *Petitioner* has raised an inference of discrimination. See *Johnson*, 125 S.Ct. at 2417.

There are two main ways that we could consider *Petitioner's* *Batson* claim in light of the "totality of the relevant facts." *Batson*, 476 U.S. at 94, 106 S.Ct. 1712. But, for both of them, we are aided by the California court's refusal to provide an entire voir dire transcript to *Petitioner*.

First, we could look at percentages. Here, the prosecution used its third peremptory strike to dismiss an African-American prospective juror. The first two peremptory strikes were used against prospective jurors who were not African-American. We have held that, "[t]o establish a prima facie case, [a petitioner does] not need to show that the prosecution [has] engaged in a pattern of discriminatory strikes against more than one prospective juror" because "the Constitution forbids striking even a single prospective juror for a discriminatory purpose." *United States v. Yeaguer-Lopez*, 22 F.3d 900, 902 (9th Cir.1994). Nonetheless, in some cases, courts have found it helpful to compare the number of minority prospective jurors stricken to non-minority prospective jurors stricken. See *Miller-El II*, 125 S.Ct. at 2325 (noting that "[t]he numbers describing the prosecutors' use of peremptories are remarkable"). *Wade*, 202 F.3d at 1198 (reviewing

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utilize on appeal when assessing a defendant's plausible *Batson* claim, we also must conclude that all defendants, including those who are indigent, have a right to have access to the tools which would enable them to develop their plausible *Batson* claims through comparative juror analysis.

"[T]he State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal." *Brill v. North Carolina*, 404 U.S. 226, 227, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971). The Supreme Court has held that indigent defendants must be provided with various portions of the trial transcript. See, e.g., *Id.* at 228, 92 S.Ct. 431 (stating that the transcript of a prior material ordinarily can be assumed to be valuable to a defendant, although ultimately finding no error because an alternative to the transcript existed); *Williams v. Oklahoma City*, 395 U.S. 438, 458-59, 89 S.Ct. 1818, 23 L.Ed.2d 440 (1969) (per curiam) (finding constitutional error where the state provided no trial transcript to an indigent defendant on appeal); *Gardner v. California*, 393 U.S. 367, 370-71, 89 S.Ct. 580, 21 L.Ed.2d 601 (1969) (holding that the indigent defendant had to be provided with a transcript of an evidentiary hearing from his original trial, so that he could file a new habeas petition). *Long v. Dist. Court of Iowa*, 385 U.S. 192, 193-94, 87 S.Ct. 362, 17 L.Ed.2d 290 (1966) (per curiam) (holding that a court's failure to provide a defendant with any portion of a habeas transcript was error). We recognize that the Court has never explicitly held that an indigent defendant is entitled to an entire voir dire transcript as of right, but *Miller-El II* makes comparative juror analysis a centerpiece of the *Batson* analysis, and that analysis cannot be done in the absence of a voir dire transcript. Accordingly, the state court's refusal to provide Petitioner with the whole voir dire transcript, in the face of a plausible *Batson* claim, involved an unreasonable application of clearly established Supreme Court precedent.

In denying, in part, Petitioner's request for an entire voir dire transcript, the state courts relied on a California rule that requires an indigent defendant to "establish with some certainty how the requested materials may be useful on appeal" before it will

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provide a transcript free of charge.⁹⁵⁶ Petitioner argues that the rule is unconstitutional because it places him in the untenable position of having to establish how the entire transcript would be helpful to him, without having access to the transcript to make such a showing.

FN6: In pertinent part, the rule provides:

A motion to augment the reporter's transcript shall identify the portion of the record with specificity, including the reporter and date of hearing. It shall establish with some certainty how the requested materials may be useful on appeal. Requests for jury voir dire should specify the exact questioning by which counsel of which juror together with the reason justifying the request.
Cal. Ct.App., First App. Dist. Local Rule 6(d).

We do not agree that local rule 6(d) violates the Constitution. The Supreme Court has upheld a federal statute that is similar to California's local rule 6(d). In *United States v. MacCollum*, 426 U.S. 317, 322-23, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion), the Court concluded that a statute requiring a judge to make a finding that a habeas petition is not frivolous and that a transcript is needed, before providing an indigent defendant with a trial transcript, does not violate the United States Constitution. In short, the California rule requiring an indigent defendant to show a specific need to obtain a complete voir dire transcript does not run counter to clearly established federal law.

The state court's error was simply in holding that an indigent defendant who raised a plausible *Batson* claim had failed to "establish with some certainty how the requested" voir dire transcript could help him on appeal, pursuant to local rule 6(d). *Batson* and its progeny explain why, as a matter of Supreme Court law, such a transcript may be useful on appeal.

In summary, under Supreme Court precedent, the burden for making a prima facie case is not an

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onerous one. *Johnson*, 125 S.Ct. at 2417. When an appellate court must decide whether the trial court that denied a *Batson* motion should instead have drawn "an inference that discrimination occurred," *Id.* at 2419, *Batson* supports the use of comparative juror analysis. *Miller-El II*, 125 S.Ct. at 2323-38. A reviewing court cannot examine the "totality of the relevant facts" and "all relevant circumstances." *Batson*, 476 U.S. at 94, 96, 106 S.Ct. 1712, surrounding a prosecutor's peremptory strike of a minority potential juror without an entire voir dire transcript. We do not hold that Petitioner has satisfied his burden of establishing a prima facie showing of unlawful discrimination under *Batson*'s first step. Rather, we hold that, in light of Petitioner's plausible *Batson* claim, the California appellate courts' denial of Petitioner's request for a complete voir dire transcript and a full comparative analysis of the venire unreasonably applied clearly established federal law.

B. Nonjury Juvenile Adjudication

Finally, Petitioner contends that the state court violated clearly established federal law by using a nonjury juvenile adjudication to increase his sentence from three to six years. In *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (Emphasis added.) Petitioner argues that a juvenile adjudication does not "qualify as a 'conviction' under the *Apprendi* exception.

We have held that the *Apprendi* "prior conviction" exception encompasses only those proceedings that provide a defendant with the procedural safeguards of a jury trial and of proof beyond a reasonable doubt. *United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir.2001). Consequently, we do not recognize nonjury juvenile adjudications as "convictions" falling within the *Apprendi* exception, and accordingly we do not allow sentencing enhancements based on such adjudications. *Id.* at 1194-95.

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California courts disagree with *Tighe*. They conclude that *Apprendi* does not preclude the use of nonjury juvenile adjudications to enhance the sentence of an adult offender. See, e.g., *People v. Bowden*, 102 Cal.App.4th 387, 125 Cal.Rptr.2d 513, 517 (2002) ("[T]he *Tighe* majority opinion is unpersuasive, and we decline to follow or extend its reasoning in the context of the Three Strikes law."). But see *People v. Smith*, 110 Cal.App.4th 1072, 1 Cal.Rptr.3d 901, 907-29 (2003) (Johnson, J., concurring in part and dissenting in part) (relying on *Tighe* to argue against the use of a prior nonjury juvenile conviction to enhance a defendant's sentence). Likewise, the Third, Eighth, and Eleventh Circuits have held that the *Apprendi* "prior conviction" exception includes nonjury juvenile adjudications, which can be used to enhance a defendant's sentence. *United States v. Burges*, 407 F.3d 1183, 1190-91 (11th Cir.) (holding that a juvenile adjudication may "not be used as a 'prior conviction' for *Apprendi* purposes); *cert. denied*, ___ U.S. ___, 126 S.Ct. 551, 163 L.Ed.2d 467 (2005); *United States v. Jones*, 332 F.3d 688, 696 (3d Cir.2003) (stating that "we find nothing in *Apprendi* or *Jones*, two cases relied upon by the *Tighe* court . . . that requires us to hold that prior nonjury juvenile adjudications that afforded all required due process safeguards cannot be used to enhance a sentence"); *United States v. Swaffey*, 294 F.3d 1030, 1033 (8th Cir.2002) ("We therefore conclude that juvenile adjudications can rightly be characterized as 'prior convictions' for *Apprendi* purposes, and that the district court did not err in increasing [the defendant's] sentence based on his prior juvenile adjudications.").

Note. *Constitutional Law-Right to Jury Trial-Eighth Circuit Holds on Adjudication of Juvenile Delinquency to Be a "Prior Conviction" for the Purposes of Sentencing Enhancement at a Subsequent Criminal Proceeding*, 116 Harv. L.Rev. 705, 708 (2002) (comparing various circuits' approaches and suggesting that "Tighe's understanding of the jury trial right is more consistent with the implications of the Supreme Court's recent jury trial jurisprudence"). To date, the Supreme Court has not resolved the conflict.

Although we are not suggesting that *Tighe* was incorrectly decided, as some of these varying interpretations of *Apprendi* suggest, the opinion

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330(3)(5, 15) k. Peremptory Challenges: Most Cited Cases
To succeed on a charge of racial bias under *Batson*, the defendant first must establish a prima facie case of purposeful discrimination by showing that: (1) he and the prospective juror are members of a "cognizable racial group"; (2) the prosecutor used a peremptory strike to remove the juror; and (3) the totality of the circumstances raised an inference that the strike was motivated by race.

[4] *Jury 230* \Rightarrow 33(5, 15)

230 Jury

230(J) Right to Trial by Jury

230K30 Denial or Infringement of Right

230K33 Constitution and Selection of Jury

230K33(5) Challenges and Objections

230K33(5, 15) k. Peremptory

Challenges: Most Cited Cases

If defendant fails to establish prima facie case of purposeful discrimination in prosecutor's use of peremptory strike in violation of *Batson*, prosecutor need not provide race-neutral explanation for the strike.

[5] *Habers Corpus 197* \Rightarrow 770197 *Habers Corpus*

197(J) Jurisdiction, Proceedings, and Relief

197(J)(C) Proceedings

197(J)(C4) Conclusiveness of Prior

Determinations

Federal Court

197K765 State Determinations in

197K770 k. Particular Issues and

Problems: Most Cited Cases

(Formerly 197K496)

Although California Court of Appeal, on appeal challenging denial of *Batson* motion, placed impermissibly high burden on petitioner by requiring showing of "strong likelihood" that prosecutor's challenge had been motivated by racial considerations, rather than "raise an inference" standard of *Batson*, California Court's determination that petitioner had not made out prima facie case was owed deference, on habeas review, where that Court had also held that petitioner had failed to establish prima facie case under either state or

Federal law, 28 U.S.C.A. § 2254(d)(1).

[6] *Criminal Law 110* \Rightarrow 1115(2)

110 Criminal Law

110XXIV Review

110XXIV(G) Record and Proceedings Not in

Record 110XXIV(G)15 Questions Presented for

Review 110K1113 Questions Presented for

Review 110K1115 Preliminary Proceedings

110K115(2) k. Selection and

Impeding of Jury: Most Cited Cases

Habers Corpus 197 \Rightarrow 496197 *Habers Corpus*

197(J) Grounds for Relief: Illegality of Restraint

197(J)(B) Particular Defects and Authority for

Detention in General

197K496 k. Jury: Most Cited Cases

Without entire voir dire transcript, California

appellate courts could not have considered

circumstances surrounding prosecutor's

peremptory challenge of African-American

potential juror, could not have evaluated potential

inference of racial bias and therefore could not

properly have found that defendant failed to

establish prima facie case of *Batson* violation.defendant raised at least plausible *Batson* claim by

arguing that juror was second African-American

juror removed from jury pool, that there remained

only two potential African-American jurors in pool,

and that nothing in struck jurors' voir dire responses

intimated legitimate basis for removal.

[7] *Courts 106* \Rightarrow 100(1)

106 Courts

106(I) Establishment, Organization, and

Procedure 106(I)(3) Effect of Reversal or Overruling

106K100 In General

106K100(1) k. In General: Retrospective

or Prospective Operation: Most Cited Cases

Habeas petitioner was entitled to benefit, under

Teague rule, of Supreme Court decision, entered

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after his conviction became final, reviewing threshold for making prima facie *Batson* claim; decision merely clarified *Batson* and did not establish new rule of criminal procedure.

[8] *Courts 106* \Rightarrow 100(1)

106 Courts

106(I) Establishment, Organization, and

Procedure 106(I)(H) Effect of Reversal or Overruling

106K100 In General

106K100(1) k. In General: Retrospective

or Prospective Operation: Most Cited Cases

Habeas petitioner was entitled to benefit, under

Teague rule, of Supreme Court decision, entered

after his conviction became final, which used

comparative juror analysis at appellate level to

determine whether prosecution had been motivated

by racial bias in exercising its peremptory strikes;

decision merely clarified *Batson* and did not

establish new rule of criminal procedure.

[9] *Jury 230* \Rightarrow 33(5, 15)

230 Jury

230(J) Right to Trial by Jury

230K30 Denial or Infringement of Right

230K33 Constitution and Selection of Jury

230K33(5) Challenges and Objections

230K33(5, 15) k. Peremptory

Challenges: Most Cited Cases

In order to determine, at first *Batson* step, whether

racial bias motivated prosecutor's decision to

remove potential juror, court must consider totality

of relevant facts and all relevant circumstances

surrounding peremptory strike.

[10] *Jury 230* \Rightarrow 33(5, 15)

230 Jury

230(J) Right to Trial by Jury

230K30 Denial or Infringement of Right

230K33 Constitution and Selection of Jury

230K33(5) Challenges and Objections

230K33(5, 15) k. Peremptory

Challenges: Most Cited Cases

Comparative juror analysis is important tool that

courts should use on appeal when assessing

defendant's plausible *Batson* claim.[11] *Criminal Law 110* \Rightarrow 113(4)(5)

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110K113(4)(5) k. Rulings as to

Summoning, Impeding, or Selection of Jury: Most

Cited Cases

Because comparative juror analysis assists a court

in determining whether totality of circumstances

gives rise to inference of discrimination, this

analysis is called for on appeal even when trial

court ruled that defendant failed to make prima

facie showing at first step of *Batson* analysis.[12] *Costs 102* \Rightarrow 302.1(1)

102 Costs

102XIV In Criminal Prosecutions

102K301.1 Security for Payment,

Proceedings in Forma Pauperis

102K302.1 Transcript of Prior Proceedings

102K302.1(1) k. In General: Most

Cited Cases

Defendants, including those who are indigent, have

right to have access to entire voir dire transcript,

which would enable them to develop their plausible

Batson claims through comparative juror analysis.[13] *Costs 102* \Rightarrow 302.1(1)

102 Costs

102XIV In Criminal Prosecutions

102K301.1 Security for Payment,

Proceedings in Forma Pauperis

102K302.1 Transcript of Prior Proceedings

102K302.1(1) k. In General: Most

Cited Cases

Local rule of California Court of Appeal, requiring

indigent defendant to "establish with some certainty

how the requested materials may be useful on appeal

before Court would provide transcript free of

charge, was constitutional.

[14] *Jury 230* \Rightarrow 34(6)

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court of appeal denied. 1143 Petitioner's requests for the entire voir dire transcript because it concluded that he did not comply with a California local rule that requires a defendant to "establish with some certainty how the requested materials may be useful on appeal." Cal. Crim. App., First App. Dist. Local Rule 6(d) (2003). The court also relied on controlling California precedent which does not require a court to provide a transcript with an entire voir dire transcript free of charge. See *People v. Landry*, 49 Cal.App.4th 783, 56 Cal.Rptr.2d 834, 828 (1996) (holding that when the purpose of the request is to compare the testimony of jurors, but no such comparison was made at the trial level, a court need not provide a free voir dire transcript).

On direct appeal to the California Court of Appeal, Petitioner challenged the denial of his *Batson* motion. The court of appeal affirmed Petitioner's conviction, and the California Supreme Court denied his petition for review without comment.¹⁹³ After exhausting state-court post-conviction procedures without success, Petitioner petitioned for a writ of habeas corpus in federal district court. The district court denied his petition. Petitioner now appeals to us.

FN3. Under AEDPA, we review the last reasoned state-court decision. *Brady v. Canada*, 350 F.3d 983, 987 (9th Cir.2003). Accordingly, we examine the California Court of Appeals decision here.

STANDARD OF REVIEW

[2] We review de novo a denial of a petition for habeas corpus. *Dubitz v. Smith*, 724 F.3d 995, 1000 (9th Cir.2000) (en banc).

We may not disturb a state court's determination unless it "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). *Clark v. Murphy*, 331 F.3d 1062, 1067 (9th Cir.2003).

DISCUSSION

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A. *Batson* Claim

[3] [4] To succeed on his charge of racial bias, Petitioner first must establish a prima facie case of purposeful discrimination. *Batson*, 476 U.S. at 93-94, 106 S.Ct. 1712. *Tolbert v. Page*, 182 F.3d 677, 680 (9th Cir.1999) (en banc). He must show that (1) the prospective juror is a member of a cognizable racial group, (2) the prosecutor used a peremptory strike to remove the juror, and (3) the totality of the circumstances raises an inference that the strike was motivated by race. *Batson*, 476 U.S. at 96, 106 S.Ct. 1712. *Cooperwood v. Canby*, 245 F.3d 1042, 1045-46 (9th Cir.2001). If he failed to establish a prima facie case, then the motion properly was denied; the prosecutor need not have provided a race-neutral explanation for the strike. *Batson*, 476 U.S. at 96-97, 106 S.Ct. 1712. *Cooperwood*, 245 F.3d at 1046.

The first and second elements of the test are met, because the prospective juror is African-American, and the prosecutor used a peremptory strike to remove the juror. Only the third element of the prima facie case is at issue, that is, whether the state court erred in failing to recognize an inference of racial motivation.

Petitioner first argues that the California Court of Appeals decision was "contrary to" Federal law, 28 U.S.C. § 2254(d)(1), because the court used an incorrect legal standard in determining whether he had made out a prima facie case. If he were correct, we would not defer to the state court. See *Wade v. Zehner*, 202 F.3d 1190, 1195 (9th Cir.2000)*1144 (holding that when the state court uses the wrong legal standard, the rule of deference does not apply). But we read the state court's decision differently.

[5] In affirming the trial court's ruling on the peremptory strike, the California Court of Appeal wrote that Petitioner had not shown a "strong likelihood" that the prosecutor's challenge had been motivated by racial considerations. The "strong likelihood" wording originates from *Wheeler*, the California equivalent of *Batson*, and the *Wheeler* standard impermissibly places on the defendant a

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more onerous burden of proof than that required by the "raie an inference" standard of *Batson*. See *Johnson v. California*, 545 U.S. 162, 125 S.Ct. 2410, 2413-14, 163 L.Ed.2d 129 (2005) (agreeing with the Ninth Circuit that the *Wheeler* standard, which requires a petitioner to show that a peremptory challenge more likely than not was based on impermissible group bias, is more demanding than the standard enunciated in *Batson*, and therefore violates the Constitution). *Wade*, 202 F.3d at 1192 ("We hold that the *Wheeler* standard, as currently interpreted by the California courts, does not satisfy the constitutional requirement laid down in *Batson*").

But the California court did not stop there. It also held that Petitioner "clearly did not establish a prima facie case of group discrimination, even under Federal precedent." In other words, the court of appeal did not rely only on the *Wheeler* standard, instead holding that Petitioner had failed to establish a prima facie case under either state or federal law. Because the court of appeal recognized the difference between the two standards, and affirmed the trial court under both, its determination deserves deference. See *Tolbert*, 182 F.3d at 682-83 (describing deference owed to state court's prima facie determination under *Batson*).

[6] Petitioner also argues that the California courts were wrong to conclude that he failed to establish a prima facie case under *Batson*. We previously held that Petitioner did not make a prima facie case of purposeful discrimination. *Boyd*, 393 F.3d at 1013. Shortly after we published our decision, however, the Supreme Court issued two opinions dealing with the application of *Batson* to peremptory challenges: *Johnson v. California*, 545 U.S. 162, 125 S.Ct. 2410, 162 L.Ed.2d 129 (2005), and *Miller-El v. Dretke*, 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (*Miller-El I*).¹⁹⁴ We asked the parties for additional briefing to discuss the implications of those decisions for this case. After further consideration, we now conclude that our previous opinion misunderstood *Batson* and that, without an entire voir dire transcript, the California appellate courts could not have considered the circumstances *1145 surrounding the contested strike, could not

have evaluated the potential inference of racial bias, and therefore could not properly have found that Petitioner failed to establish a prima facie case.

FN4. This is not the first time that the Supreme Court granted certiorari in that case. In *Miller-El v. Cockrell*, 537 U.S. 322, 326-27, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (*Miller-El I*), the Supreme Court reviewed the petitioner's challenge to the denial of his request for a certificate of appealability ("COA") so that he could pursue habeas corpus relief based on a claim of group bias in jury selection. At *Miller-El's* trial, the prosecution used peremptory strikes against 10 of 11 African-American prospective jurors. *Id.* at 326, 123 S.Ct. 1029. *Miller-El's* trial predated *Batson*, but by the time he filed his federal habeas motion, *Batson* was well entrenched. *Id.* at 327, 123 S.Ct. 1029. The Fifth Circuit refused to grant a COA, concluding that the petitioner had failed to establish a viable claim of constitutional error. *Id.* at 326-27, 123 S.Ct. 1029. The Supreme Court reversed, finding that it was at least debatable whether a violation of *Miller-El's* constitutional rights had occurred. *Id.* at 348, 123 S.Ct. 1029. After a remand, the Fifth Circuit denied *Miller-El's* habeas petition on the merits. The Supreme Court again granted certiorari in *Miller-El II*, to consider whether the circuit court's decision was correct.

[7] In *Johnson*, the Supreme Court reviewed the level of proof necessary to establish a prima facie case of discrimination under the first step of *Batson*. 125 S.Ct. at 2416. In *Johnson*, the prosecution used three of its 12 peremptory challenges to strike the only African-American prospective jurors from the pool. *Id.* at 2414. Defense counsel made *Batson* motions after the second and third strikes against African-American prospective jurors. After the later *Batson* motion, the trial court concluded that, although the situation was "very close," the defense had not established a prima facie case of

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prospective jurors stricken to non-minority prospective jurors stricken. See *Miller-El II*, 125 S.Ct. at 2335 (noting that "[t]he numbers describing the prosecution's use of peremptories are remarkable"). *Wade*, 2002 F.3d at 1198 (reviewing the statistical evidence of the number of African-American potential jurors stricken compared to the racial makeup of the other potential jurors who were struck and of the pool at large, although noting that statistical disparities can be misleading).

We know only that the prosecutor used a peremptory strike to remove one African-American juror and that two other African-American prospective jurors remained in the pool at that time. Because the state courts did not furnish a complete voir dire transcript to Petitioner, who is indigent, we lack the additional data that would allow the kind of statistical analysis that both the Supreme Court and this court have performed in the past. Second, we could assess "all relevant circumstances." *Batson*, 476 U.S. at 96, 106 S.Ct. 1712, surrounding the challenged peremptory strike by engaging in comparative juror analysis. To support his claim, Petitioner contends here, as did his trial counsel in the first instance, that no nonracial reason existed for the peremptory challenge. In order to assess Petitioner's claim, we must compare the prospective *1148 juror who was stricken with the other prospective jurors who were not.

In our first *Boyd* opinion, we held that *Batson* does not compel a court to conduct comparative juror analysis for the first time on appeal. *Boyd*, 393 F.3d at 1013. We looked to California cases that require a petitioner to preserve the issue at trial, in order for a court to consider comparative juror analysis on appeal. See, e.g., *People v. Johnson*, 30 Cal.4th 1302, 1 Cal.Rptr.3d 1, 71 P.3d 270, 285 (2003) (noting that the court maintains its "longstanding practice" of refusing to engage in comparative juror analysis for the first time on appeal, *rely on other grounds*, *Johnson*, 545 U.S. 163, 125 S.Ct. 2410, 163 L.Ed.2d 129. But after *Miller-El II*, we recognize that our previous reading of *Batson* was too narrow and that *Batson* does contemplate a comparative juror analysis on appeal. In *Miller-El II*, the prosecution used 10 of its

peremptory challenges to strike African-American jurors, leaving only one African-American juror in the pool. 125 S.Ct. at 2335. After *Miller-El II* was convicted but while his appeal was pending, the Supreme Court decided *Batson II* at 2346 (Thomas, J., dissenting). The state court of appeals remanded the case for a *Batson* hearing, where defense counsel presented some evidence about the jurors who were struck and the government was forced to explain its strikes. *Id.*

[10] The Supreme Court, though, looked beyond the evidence that *Miller-El II* had presented to the trial court and conducted a comprehensive comparative juror analysis on appeal. *Id.* at 2335-38 & 2336 n. 2. Accordingly, the California court's view that comparative juror analysis can take place on appeal only when the trial court engaged in such analysis in the first instance has been called into question. Defendant asks us to examine the responses of jurors other than Juror T. (the African-American juror struck) in determining whether the trial court erred in finding that defendant failed to establish a prima facie case of group bias. In earlier cases we explained that, although such an examination is appropriate at the trial court level when the issue is properly brought to that court's attention, such an examination for the first time on appeal is unreliable. Defendant urges reconsideration of these cases in light of the high court's decision in *Johnson*, in which the court did not comment upon whether comparative analysis should be undertaken for the first time on appeal, and another decision issued the same day, *Miller-El II*, in which the court employed comparative juror analysis in circumstances in which it was undisputed that a prima facie case had been made. Assuming without deciding that a comparative juror analysis should be undertaken under the circumstances presented (in which the trial court found that the defendant failed to make a prima facie case), we conclude [that] defendant's proffered analysis fails to establish a prima facie case of group bias.

People v. Cornwell, 37 Cal.4th 50, 33 Cal.Rptr.3d 1, 117 P.3d 622, 635 (2005) (citations omitted) *cert. denied* — U.S. —, 126 S.Ct. 1432, 164 L.Ed.2d 133 (2006). Like the various California courts to address the issue, we do not hold that

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comparative juror analysis always is compelled at the appellate level. See, e.g., *People v. Wade*, 36 Cal.4th 186, 30 Cal.Rptr.3d 464, 114 P.3d 717, 728 (2005) (declining to decide whether *Miller-El II* requires comparative juror analysis on appeal, but concluding that even if it did, such an analysis did not support the defendant's claim that the prosecution's peremptory strikes were motivated by racial bias). *cert. denied*, 547 U.S. 1043, 126 S.Ct. 1625, 164 L.Ed.2d 340, *1149 (2006). But, comparative juror analysis is an important tool that courts should use on appeal.

[11] Moreover, because comparative juror analysis assists a court in determining whether the totality of the circumstances gives rise to an inference of discrimination, we believe that this analysis is called for on appeal even when the trial court ruled that the defendant failed to make a prima facie case showing at the first step of the *Batson* analysis. Without engaging in comparative juror analysis, we are unable to review meaningfully whether the trial court's ruling at either step one or step three of *Batson* was unreasonable in light of Supreme Court precedent. In *Miller-El II*, the trial court concluded that the defendant had made a prima facie case and had asked the prosecution to provide race-neutral reasons for the strikes. 125 S.Ct. at 2323. The Court, on review, at the third *Batson* step considered the written and oral statements made by all the prospective jurors and the prosecution's stated reasons for dismissing the African-American jurors to determine whether race played a role in the prosecution's use of its peremptory strikes. *Id.* at 2333-38.

Some California courts have questioned whether comparative juror analysis is similarly appropriate at the first *Batson* step, where the prosecution has not voiced its rationales for the strikes, instead of at the third *Batson* step. See, e.g., *People v. Gray*, 37 Cal.4th 168, 33 Cal.Rptr.3d 451, 118 P.3d 496, 511 (2005) ("[*Miller-El II*] thus did not consider whether an appellate court must conduct a comparative juror analysis in the first instance, when the objector has failed to make a prima facie showing of discrimination, or whether an appellate court must conduct a comparative juror analysis for the first time on appeal, when the objector failed to

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do so at trial"), *petition for cert. filed* — U.S.L.W. — (U.S. Feb. 23, 2006) (No. 05-9564). *People v. Guerra*, 37 Cal.4th 1067, 40 Cal.Rptr.3d 118, 129 P.3d 321, 351 (2006) ("[P]erforming a comparative analysis is problematic when, as here, the prosecutor did not provide reasons for the challenge because the trial court found no prima facie case had been established"). We believe, however, that Supreme Court precedent requires a comparative juror analysis even when the trial court has concluded that the defendant failed to make a prima facie case.

In *Miller-El II*, the Supreme Court did not merely review the reasons that the prosecutor gave for peremptorily striking the African-American jurors; instead it also considered the voir dire questions that the prosecutor had posed to the various jurors. 125 S.Ct. at 2333-38. The Court concluded that the prosecutor asked different questions of minority prospective jurors from those it asked of nonminority prospective jurors in order to elicit different responses, which could then justify a peremptory strike on purportedly nonracial grounds. *Id.* at 2337. In some circumstances, a court may have to review the questions that the prosecution asked of jurors at step one of the *Batson* analysis to determine whether a defendant has made a prima facie showing of unlawful discrimination. There is nothing that suggests that it is more difficult or less desirable to engage in such analysis at step one rather than step three of *Batson*. *Cf. United States v. Espinoza-Gonzalez*, 422 F.3d 897, 904-05 (9th Cir.2005) (engaging, on direct review, in comparative juror analysis to hold that the defendant established a prima facie case of intentional unlawful discrimination).

Further, both *Johnson* and *Miller-El II* suggest that courts should engage in a rigorous review of a prosecution's use of peremptory strikes. If a trial court's conclusion "1150 that a defendant failed to make a prima facie case could insulate from review a prosecution's use of peremptory strikes, the holdings of those Supreme Court opinions would be undermined.

[12] But we can engage in no comparative juror analysis here, because we do not know what

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Cir. 2002) ("We therefore conclude that juvenile adjudications can rightly be characterized as "prior convictions" for *Apprenti* purposes, and that the district court did not er in increasing [the defendant's] sentence based on his prior juvenile adjudications."); cf. *Naie*, *Constitutional Law-Right to Jury Trial-Eighth Circuit Holds an Adjudication of Juvenile Delinquency to Be a "Prior Conviction" for the Purposes of Sentence Enhancement at a Subsequent Criminal Proceeding*, 116 Harv. L. Rev. 705, 708 (2002) (comparing various circuit approaches and suggesting that "Tyle's understanding of the jury trial right is more consistent with the implications of the Supreme Court's recent jury trial jurisprudence"). To date, the Supreme Court has not resolved the conflict.

[13] Although we are not suggesting that *Tyle* was incorrectly decided, as some of these varying interpretations of *Apprenti* suggest, the opinion does not represent clearly established federal law "as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1). In general, Ninth Circuit precedent remains persuasive authority in determining what is clearly established federal law. See *Ducharme v. Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 1999) (stating that Ninth Circuit case law may be used to help determine clearly established federal law). But, in the face of authority that is directly contrary to *Tyle*, and in the absence of explicit direction from the Supreme Court, we cannot hold that the California courts' use of *Petitioner's* juvenile adjudication as a sentencing enhancement was contrary to, or involved an unreasonable application of, Supreme Court precedent.

AFFIRMED in part, REVERSED AND REMANDED in part with instructions to enter a conditional writ of habeas corpus, ordering Mobassa Boyd's release unless the State provides to him, without charge, a complete voir dire transcript within a reasonable period of time, after which he may review his *Barton* claim in the district court.

C.A.9 (Cal.), 2006.
Boyd v. Newland
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127 S. Ct. 2249

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(Cite as: 127 S. Ct. 2249, 177 S. Ct. 2249 (Mem))

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H
Newland v. Boyd
U.S., 2007

Supreme Court of the United States
Anthony C. NEWLAND, Warden, petitioner,
v.
Mobassa BOYD,
No. 06-1032.

May 14, 2007.

Case below, 467 F.3d 1139.

Petition for writ of certiorari to the United States
Court of Appeals for the Ninth Circuit denied.

U.S., 2007
Newland v. Boyd
127 S. Ct. 2249, 167 L. Ed. 2d 1089, 75 USLW 3403,
75 USLW 3603, 75 USLW 3607

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EXA8B2 (C.)

BOARD OF PAROLE HEARINGS
STATE OF CALIFORNIA

Records Office Use Only

Projected Revocation Release Date

Revocation Release Date

Controlling Discharge Date

Discharge Review Date

SUMMARY OF REVOCATION HEARING AND DECISION

(BPH Rules, Chapter 6, Article 3)

PRELIMINARY INFORMATION

Type of Hearing REVOCATION	Location of Hearing SANTA RITA COUNTY JAIL Parolee in custody at Time of Hearing: YES
Basis for Charges Parole Violation Report, Dated: 27-SEP-2007 Police Report Agency Dated: 07-SEP-2007 OAK PD 07-70249	Optional Waiver NO Date Signed by Parolee: Date of BPH Action: Assessment:

Legal Data

The crime for which the parolee was committed to prison occurred on or before 12-31-1978: NO

The crime for which the parolee was committed to prison occurred on or after 1-1-1979: YES

Date of arrest on current parole violation charge(s): 19-SEP-2007

Date hold was placed on current parole violation charge(s): 19-SEP-2007

ADA Special Needs: EOP

Present at Hearing

Hearing Officer: D STAR

1. ☒ Yes ☐ No Parolee (If Parolee absent, Why?) ☐ Waived
2. ☒ Yes ☐ No Attorney Name: LARSEN, SUSIE
3. ☒ Yes ☐ No Agent of Record or Substitute: TUCKER, WILLIAM Reason not present:
4. ☐ Yes ☐ No Hearing Agent: Reason not present:
5. ☒ Yes ☐ No Observers Name and Organization: DEPUTY STEWART, SECURITY
6. ☐ Yes ☒ No Interpreter Assigned Language Name

Witnesses (continue on the last page if more than 8 witnesses)

Present		Name	Notified		Wil. Desig.**		Testified	Excused	If absent, state specific reason.
Yes	No		Meth.*	Date	Stat.	Req.			
X		LIMMIE BOYD	SP	09-OCT-07	V	S	X		DNA
X		PHILLIP LARKIN	SP	09-OCT-07	V	S	X		
	X	LILLA DOWNS	SP	09-OCT-07	V	S			DNA

*NOTIFICATION METHOD

M = Memo PC = Personal Contact
L = Letter SP = Subpoena
PH = Phone TT = Teletype

**USE ABBREVIATION FOR WITNESS DESIGNATION

Status: A = Adverse Requested by: S = State
F = Friendly P = Parolee
V = Victim

NAME
BOYD, MOBASSACDC NUMBER
P05952INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAMHEARING DATE
23-OCT-2007

SUMMARY OF REVOCATION HEARING AND DECISION

Preliminary Information (cont.)

H. HEARING: Occurred

REASON:

Specify Witnesses/Documents needed for next hearing:

SUMMARY OF FINDINGS

ADMISSIONS/DENIALS AND FINDINGS

Charges			Plea			Findings		
Charge Number	Code Number	Charge Specified	Admit	Deny	No Plea	Good Cause	Dismiss	Postponed
1.	999	ELDER ABUSE			X		X	
2.	915	THREATEN/HARASS ANOTHER			X			
			Amended. See Charge # below.					
2A.	992	Criminal threats				X		
			Reason: More accurately reflects parolee's behavior					

NAME
BOYD, MOBASSACDC NUMBER
P05952INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAMHEARING DATE
23-OCT-2007

REASON FOR DECISION

Basis for Conclusion:

ADA: DEC HX OF 2001 EOP CLASSIFICATION AND CURRENTLY HAS POC CONDITION; PAROLEE REPORTS NEEDS PSYCH MEDS, NOT CURRENTLY RECEIVING AT JAIL HOWEVER FELT OK AND WISHED TO PROCEED; ASSIGNED ATTORNEY AS ACCOMMODATION FOR MENTAL HEALTH ISSUES.

NO PRELIMINARY ISSUES RAISED

CH 1 = DISMISSED ; INSUFFICIENT EVIDENCE OF ANY WILLFULLY CAUSING OF PHYSICAL OR MENTAL SUFFERING TO LILLA DOWNS; MS DOWNS DNA AS SHE IS 92 YRS OLD AND REPORTEDLY HAS DEMENTIA (PER SONS TESTIMONY); WITNESS LIMMIE BOYD TESTIFIED TO PAROLEE MANIPULATING THE GRANDMOTHER FOR MONEY HOWEVER THIS DOES NOT RISE TO LEVEL OF CAUSING ANY MENTAL SUFFERING AND MR. LIMMIE BOYD TESTIFIED TO THIS AS WELL.

CH 2 = GCF ON AMENDED CHARGE OF CRIMINAL THREATS BASED ON LIMMIE BOYD CREDIBLE TESTIMONY TODAY THAT WAS CONSISTANT WITH HIS EARLIER STATEMENTS TO AGENT AND TO POLICE THAT PAROLEE WENT INTO A RAGE AT HIS HOUSE AFTER LIMMIE TOLD HIM HIS FINANCIAL SUPPORT WAS BEING REDUCED, LIMMIE ARMED HIMSELF IN SELF DEFENSE, ASKED PAROLEE TO LEAVE, THREATENED TO CALL POLICE, PAROLEE PICKED UP A PORTA POTTIE, YELLED HE WAS GOING TO KILL FATHER AND THREATENED SAME AS HE LEFT THE RESIDENCE; WITNESS LARKIN TESTIFIED TO NOT BEING PRESENT ON THIS DATE BUT WITNESSING A PRIOR CONFRONTATION BETWEEN THE TWO AT LIMMIE BOYD'S HOUSE WHERE HE HAD TO STEP INBETWEEN; PAROLEE DENIED THREATENING LIMMIE, ADMITTED WAS OVER THERE TO VISIT GRANDMOTHER AND ASK FOR FUNDS BUT LEFT ON HIS OWN; PAROLEE EXPLANATION TODAY WAS THAT FATHER LYING AS HE HAS NEVER LIKED HIM HOWEVER EVIDENCE TODAY INDICATED CONSIDERABLE FINANCIAL SUPPORT HAD BEEN PROVIDED PRIOR TO CURRENT INCIDENT BY FATHER AND GRANDMOTHER AND A HELPFUL RELATIONSHIP.

Basis for Disposition:

1ST TERMER ON PAROLE FOR P12021

E SINCE 10-22-02 WITH ONE PRIOR 121 RTC LAST YEAR FOR ABSCONDING/RESISTING/POC/TRAVELING ; WAS LIVING WITH RELATIVE AND GOING TO SCHOOL UNTIL RECENTLY; PAROLEE PRESENTED LETTER FROM MR. BALDE OF MUSLIM CHURCH INDICATING PAROLEE HAD BEEN DOING VOLUNTEER TEACHING AT THEIR CHURCH; AGENT ALSO NOTED THAT PAROLEE DID REPORT IN FOR THE ARREST ON THE CURRENT CHARGE; BASED ON NATURE OF CHARGE NOTING ABOVE INFORMATION IN MITIGATION BUT A SERIOUS CHARGE WITH HX OF VIOLENCE INVOLVING RELATIVES, RTC FOR NINE MNS INELIGIBLE PLUS ADDED SPECIAL CONDITION OF NO CONTACT WITH VICTIM LIMMIE BOYD.

IAME
BOYD, MOBASSA

CDC NUMBER
P05952

INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAM

HEARING DATE
23-OCT-2007

BOARD OF PAROLE HEARINGS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION**SUMMARY OF DISPOSITION**

Parole Referral: REFER

Custody Status: In Custody as of 19-SEP-07

☐ Continue on Parole ☐ Schedule for Revocation☐ Dismiss ☐ Other Non-Rev Sanction☒ Parole Revoked-Return to Custody: 9 monthsServe ☐ Consecutively ☐ Concurrently☐ Parole Revoked-Return to Custody: months for Psych Rx☐ Time Served: toHold Order: ☐ Place ☐ Remove**3057 Credits**☐ Eligible☒ Ineligible 3057d-1 Reason for Ineligibility:☒ Commitment Offense: P12021☐ Revocation Offense:☐ Parole Violation:☐ Sentenced under PC 1168:☐ Unsuitable for credits because of PC 3057(d)(2)(e)☐ Prior Criminal History☐ Circumstances & Gravity of Parole Violation

Specify Reason

Parolee Decision☐ Accept ☐ Reject ☐ Optionally Waive**Optional Waivers**☐ Previous BPH Action of is:☐ Rescinded ☐ Reaffirmed**Special Conditions of Parole**☐ Noted ☐ Reaffirmed ☒ Amended**Other****Special Condition**ADD NO CONTACT WITH LIMMIE
BOYD**Reason**

VICTIM OF C/O

Instructions to CDCR or DAPO StaffAGENT TO REVIEW WITH DAPO NEEDS FOR NO CONTACT WITH
GRANDMOTHER BASED ON CIRCUMSTANCES OF C/O**Miscellaneous Actions****BPH HEARING PANEL**

NAME

NAME

DECISION REVIEW BY:

REVOCATION HEARING TIME (MINUTES)

1. Prehearing Prep. Time: 18
2. Actual Hearing Time: 95
3. Report Completion Time: 20
4. Other:

Total: 133Hearing Accommodations (ADA) Provided: ☐ Yes ☐ No

Accom:

NAME
BOYD, MOBASSACDC NUMBER
P05952INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAMHEARING DATE
23-OCT-2007

BOARD OF PAROLE HEARINGS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION

V. OBJECTIONS

☒ None ☐ Yes

NAME
BOYD, MOBASSA

CDC NUMBER
P05952

INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAM

HEARING DATE
23-OCT-2007

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AL STATUS SUMMARY TYPE- D CSP-S 01/04/2000 22:44

IC NUMBER	NAME	ETHNIC	BIRTHDATE
P05952	BOYD,MOBASSA,K	BLA	08/28/1974

IRM STARTS	MAX REL DATE	MIN REL DATE	MAX ADJ REL DT	MIN ADJ REL DT
8/03/1998	11/11/2003	10/22/2002	11/11/2003	10/22/2002

TERM	PAROLE PERIOD
6/00 + ENHCMENTS 0/00 = TOT TERM 6/00	3 YRS

-PRISON + POST SENTENCE CREDITS

E	P2900-5	P1203-3	P2900-1	CRC-CRED	MH-CRED	P4019	P2931	POST-SENT	TOT
404	145					72	33		250

SV DT/ COUNTY/	CASE	SENTENCE DATE	CREDIT	OFFENSE
NT	OFF-CODE	DESCRIPTION	CODE	DATE

TROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

CONTROLLING CASE --	NO STRIKES: 2
03/1998 ALA 132404 6/30/1998	3
P12021(E) POSS F/A W/PRIOR JUV CONV	02/05/1998

DATE	END DATE	LOG NUMBER	RULE NUMBER	DAYS	ASSESS	LOST	REST	DEAD
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08/03/1998			*****BEG BAL*****					
05/01/1999			199050516 3005(C)	90	90			
08/03/1998			132404					
12/28/1999			199050516 3005(C)	90				
CURRENT PC BALANCE:	0		CURRENT BC BALANCE:		385			

CHARGE SHEET/REVOCAATION TRACKING/SCHEMULING REQUEST
CDC 1676 (4/91)CORRECTIONS
ORIGINAL - BOARD REPORT
1ST COPY - R.H.C.

REPORT TO:

☒ BOARD OF PRISON TERMS☐ NARCOTIC ADDICT EVALUATION AUTHORITY2ND COPY - H.A.
3RD COPY - PAROLEE
4TH COPY - U.S.

DC NUMBER 205952	NAME (LAST, FIRST, MI) Boyd, Mobassa	NAME BOOKED AS Same	REGION/UNIT II/Oakland	CSTCU - ST <input type="checkbox"/> YES <input type="checkbox"/> NO
ARREST DATE 9-19-07	ARRESTING AGENCY Oakland PD	BPT REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input checked="" type="checkbox"/> NON-MANDATORY	BOOKING NUMBER AND/OR LOCATION AYB907/Santa Rita jail	
ARREST CODE *	* ARREST CODES: A P&CSD STAFF ALONE AB P&CSD ASSISTED BY LAW ENFORCEMENT AGENCY B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM P&CSD			
HOLD DATE 9-19-07	DISCOVERY DATE 9-19-07	HOLD REMOVED DATE Intact	AGENT OF RECORD W. Tucker	CONTROLLING DISCHARGE DATE 7-9-08
CHARGES AND CODES Cond 4: Elder Abuse (999)		CHARGES AND CODES 4.		
Cond 4: Threaten/Harass another (915)		5.		
		6.		
REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO: <input type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input checked="" type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS				DATE COPY SENT TO PAROLEE SEP 28 2007

Supporting Evidence

SANTA RITA D.R.U.

Charge 1 and 2:

On 9-7-07, Subject's father Limmie Boyd came to parole office and provided AOR with a written statement regarding subject Mobassa Boyd.

Limmie stated that in August 2007, the subject's grandmother Lilla Downs gave the subject's landlord Phillip Larkin \$800.00 to distribute to subject on as need basis. The subject used up the monies before the end of the month and then borrowed \$344.00 from Landlord Phillip. The subject said he would pay Phillip back September 2007. The subject failed to pay Mr. Phillip back. The subject claimed that he did not receive his (SSI) check in September 2007, but later admitted that he had received his SSI check but he had already used up the cash. The subject went over to his grandmother's Lilla and attempted to manipulate her out of \$800.00 more but was unsuccessful.

Mr. Limmie stated that on 9-3-07, the subject stated that his elderly mother Lilla has been paying the subject's rent of \$550.00 monthly as well as given him \$200.00 a week for transportation to school. The subject's grandmother has a problem thinking things through. When the subject dropped out of school the subject's elderly grandmother Lilla reduced his weekly amount to \$140.00 the subject became angry and went into a rage. Limmie stated that it appeared that the subject wanted to fight. The subject grabbed a small table and threatened Limmie with it. Limmie picked up a hammer to use for self defense. No one was struck with the table or hammer. Limmie called the police and told the subject to get out of his house. The subject prior to leaving the residence threatened to kill Limmie.

On 9-17-07, AOR received copy of complaint letter that Limmie Boyd submitted to the Oakland Police department report [REDACTED]. Information is same as above.

On 9-19-07, The subject was arrested by DAPO in the parole office for Elder abuse and threaten another person. Subject was transported and booked at Glenn Dyer County jail.

PAROLEE'S NAME
Boyd, MobassaCDC NUMBER
P05952

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Parolee Statement: Subject did not provide a statement.

Court Information: No court date.

Attachments: Oakland Police Report [REDACTED]

Witnesses: Agent W. Tucker 4848,

Victims Limmie Boyd, Lilla Downs and Phillip Larkin

SUMMARY OF PAROLE ADJUSTMENT

CDC 1521-B (1/91)

ATTACH LEGAL STATUS SUMMARY

DOC NUMBER P05952	NAME (LAST, FIRST, MI) Boyd, Mobassa	DATE OF REPORT 9-25-07-07
PRIOR COMMITMENT(S)		
OFFENSE TITLE(S)	CODE SECTION(S)	DATE(S) OF COMMITMENT
SPECIAL CONDITION(S) OF PAROLE	INITIAL PAROLE DATE 10-22-02	LAST REV. REL DATE (RRD) 3-10-07

Participate in Parolee Outpatient Clinic

RESIDENCE			
LAST KNOWN ADDRESS [REDACTED] Oakland CA. 94605	LIVING WITH Self	RESIDENTIAL PATTERN Stable	
MEANS OF SUPPORT			
SOURCE OF SUPPORT SSI	IF EMPLOYED, EMPLOYER'S NAME & BUSINESS ADDRESS Unemployed	DATES EMPLOYED FR. - TO:	POSITION HELD

EVALUATION - Cover the period from date of last release to current report. Include positive and negative factors of this release and community programs available in lieu of revocation, e.g. drug programs, psychiatric in-patient or out-patient, etc.

SECOND STRIKER

Subject is a Multi termer with a commitment offense of Convicted person with a firearm. Subject has a criminal history that consist of

Convictions for: Convicted person in possession of a firearm and
Arrest for: Second Degree Murder, Threaten crime with intent to terrorize,
Felon/Addict/Possess Firearm.

Subject's adjustment to parole has been moderate. Subject is a second striker with a long criminal history which consists of a violent past which is reflected by CII/Rap Sheet. Subject's criminal history makes him a threat to the community. A Board of Prison Hearings is warranted. If good cause is found a return to custody recommended.

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PAROLEE'S NAME Boyd, Mobassa	CDC NUMBER P05952
---------------------------------	----------------------

STATE OF CALIFORNIA

RECOMMENDATION, REVIEW AND SIGNATURE SHEET

CDC 1521-D (1-91)

BPT	RECOMMENDATION	NAEA
<input type="checkbox"/> Reinstate on Parole as of _____	<input type="checkbox"/> Continue outpatient or civil addict parole status	
<input type="checkbox"/> Cancel Want - Remove Warrant from File	<input type="checkbox"/> Dismiss _____	
<input type="checkbox"/> Extend Parole Period to Maximum Pending Parole	<input type="checkbox"/> Suspend - reinstate as of _____	
<input type="checkbox"/> Continue on Parole	<input type="checkbox"/> Suspend - return	
<input type="checkbox"/> Dismiss	<input type="checkbox"/> Remove Release / Parolee at Large	
<input type="checkbox"/> Remove Parole Hold	<input type="checkbox"/> Continue oral order of _____	
<input checked="" type="checkbox"/> Retain Parole Hold	<input type="checkbox"/> Confirm oral order of _____	
<input checked="" type="checkbox"/> Refer to Screening Calendar	<input type="checkbox"/> Vacate oral order of _____	
<input type="checkbox"/> Schedule for Revocation Hearing	<input type="checkbox"/> Other _____	
<input type="checkbox"/> Schedule for Revocation Hearing -- Psychiatric Treatment		
<input type="checkbox"/> Schedule for Good Cause Hearing -- (Cooperative Parole)		
<input type="checkbox"/> Maintain in Community Pending Revocation Proceedings.		
<input type="checkbox"/> Other _____		

PAROLE AGENT'S SIGNATURE W. Tucker <i>[Signature]</i>	DATE 9-26-07
--	-----------------

BPT	UNIT SUPERVISOR'S DECISIONS	NAEA
<input type="checkbox"/> Reinstate on Parole as of _____	<input type="checkbox"/> Continue outpatient or civil addict parole status	
<input type="checkbox"/> Cancel Want --Remove Warrant from File	<input type="checkbox"/> Dismiss	
<input type="checkbox"/> Extend Parole Period to Maximum Pending Parole	<input type="checkbox"/> Suspend - reinstate as of _____	
<input type="checkbox"/> Continue on Parole	<input type="checkbox"/> Suspend - return	
<input type="checkbox"/> Dismiss	<input type="checkbox"/> Remove Release / Parolee at Large	
<input type="checkbox"/> Remove Parole Hold as of _____	<input type="checkbox"/> Continue oral order of _____	
<input checked="" type="checkbox"/> Retain Parole Hold	<input type="checkbox"/> Confirm oral order of _____	
<input checked="" type="checkbox"/> Refer to Screening Calendar	<input type="checkbox"/> Vacate oral order of _____	
<input type="checkbox"/> Schedule for Revocation Hearing	<input type="checkbox"/> Other _____	
<input type="checkbox"/> Schedule for Revocation Hearing -- Psychiatric Treatment		
<input type="checkbox"/> Schedule for Good Cause Hearing -- (Cooperative Parole)		
<input type="checkbox"/> Maintain in Community Pending Revocation Proceedings		
<input type="checkbox"/> Other _____		
<input type="checkbox"/> Note to Hearing Agent: History of major psychiatric disorder should be considered in attorney determination.		
<input type="checkbox"/> Note to Classification Staff Representative: May be psychotic. Requires evaluation for category.		

CASE REVIEW
 COMMENTS: *Subject posed as threat risk to victim and warrants BPH review of arrest charges.*

SUPERVISOR'S SIGNATURE Jody Black <i>[Signature]</i>	DATE 9-27-07
---	-----------------

DATE PAROLEE COPY PROVIDED _____	<input type="checkbox"/> MAILED <input type="checkbox"/> DELIVERED	BY: (SIGNATURE) _____
----------------------------------	--	-----------------------

DEPARTMENT OF CORRECTIONS

PAGE 1 OF 1

PAGE 1 OF 1

INSTRUCTIONS FOR COMPLETING - For minor violations, the Parole Agent is to complete the columns titled "DATE OF VIOLATION," "VIOLATION," and "ACTION." The Unit Supervisor will enter the "ACTION CODE" and sign in the column titled "ACTION TAKEN BY." For all Board of Prison Terms (BPT) actions, where good cause is found, the Parole Agent shall complete all columns including the "ACTION CODE" column. Entries are to be in chronological order and typed or legibly handwritten. The Original CDC 1244 is to be maintained on the top right-hand section of the field file. A copy of the CDC 1244 is to be attached to violation reports.

ACTION	ACTION CODE
COP - Continue on Parole	1. Mandatory BPT
RTC - Return to Custody	2. Non-Mandatory BPT
Dismiss - No Parole Violation	A. Commitment Offense
Reinstate	B. Repeat Violations
SATCU	C. Psychological Problems
PAL	D. Serious Violation
Other (specify):	E. Poor Parole Adjustment
	3. Good Parole Adjustment
	4. Community Program
	5. Minimal Risk Person or Property
	6. No Parole Violations
	7. Dismissal

118236) B C	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	66756) B C	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	RISES SCORE	NEEDS SCORE
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11927(c) P.C. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	667.5(c) P.C. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	RISKS SCORE H/C	NEEDS SCORE 2
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[illegible]

UNIT

OAKLAND 2

211.

STATE OF CALIFORNIA
CHARGE REPORT
CDC 1502-B (08/05)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

DISTRIBUTION
ORIGINAL - C-FILE
1ST COPY - FIELD FILE
2ND COPY - PAROLEE

REPORT TO: ☐ BOARD OF PAROLE HEARINGS

CDC NUMBER P05952	NAME: (LAST, FIRST, MI) Boyd, Mobassa		NAME BOOKED AS Same		REGION/UNIT II/Oakland 2	
ARREST DATE 9-19-07	ARRESTING AGENCY DAPO		BPH REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NON-MANDATORY		BOOKING NUMBER AND/OR LOCATION AYB907/Glenn Dyer jail	
ARREST CODE * A	* ARREST CODES A DAPO STAFF ALONE AB DAPO ASSISTED BY LAW ENFORCEMENT AGENCY B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM DAPO					
HOLD DATE 9-19-07	DISCOVERY DATE 9-19-07	HOLD REMOVED DATE Intact	AGENT OF RECORD W. Tucker	CONTROLLING DISCHARGE DATE 7-9-08	DISCHARGE REVIEW DATE 3-10-08	IMMINENT DISCHARGE <input type="checkbox"/>
CHARGES AND CODES Cond 4: Elder Abuse (999)			CHARGES AND CODES			
1.			4.			
2. Cond 4: Threaten (915)			5.			
3.			6.			
REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO <input type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input type="checkbox"/> PROPERTY - OTHERS <input checked="" type="checkbox"/> SAFETY - OTHERS				DATE COPY GIVEN		NAME OF PERSON NOTICING PAROLEE

On 9-19-07, Subject reported to the Oakland Parole office. Subject was arrested by DAPO for Threats and Elderly abuse. Subject was transported to Glenn Dyer jail.

RECEIVED

SEP 28 2007

SANTA ANA C.R.

PAROLE AGENT'S RECOMMENDATION:

Retain hold, Pending investigation of charges

PAROLE AGENT'S SIGNATURE W. Tucker				DATE 9-19-07	
UNIT SUPERVISOR'S ACTION <input checked="" type="checkbox"/> DECISION		<input type="checkbox"/> REVIEW	<input type="checkbox"/> RETAIN HOLD	<input type="checkbox"/> RELEASE HOLD AS OF (DATE):	<input type="checkbox"/> CANCEL WARRANTS - WANTS
<input type="checkbox"/> CONTINUE ON PAROLE	<input type="checkbox"/> CONTINUE IN OUT-PATIENT STATUS	<input type="checkbox"/> *DISCHARGE EFFECTIVE DATE:	<input type="checkbox"/> RETAIN ON PAROLE		
<input type="checkbox"/> REINSTATE ON PAROLE AS OF (DATE):	<input type="checkbox"/> TIME LOSS <input type="checkbox"/> NO TIME LOSS	<input type="checkbox"/> SUSPENDED/REINSTATE IN OPS AS OF (DATE):	<input type="checkbox"/> REFER TO BPH	<input type="checkbox"/> INVESTIGATE, SUBMIT APPROPRIATE REPORT BY (DATE): 9-27-07	
SPECIAL CONDITION(S): <input type="checkbox"/>				<input type="checkbox"/> ADD	<input type="checkbox"/> DELETE
UNIT SUPERVISOR'S COMMENTS/RECOMMENDATION <input checked="" type="checkbox"/> I HAVE LOOKED AT THE INFORMATION. I BELIEVE THERE IS PROBABLE CAUSE TO MAINTAIN THE PAROLE HOLD					
UNIT SUPERVISOR'S SIGNATURE Jody Black				DATE 9-19-07	
PAROLE ADMINISTRATOR'S COMMENTS/DECISION					
<input type="checkbox"/> REFER TO BPH	<input type="checkbox"/> *DISCHARGE EFFECTIVE DATE	FIELD ADMINISTRATOR'S SIGNATURE		DATE	

For Departmental Use Only TF-862-1 (2/06)

CITIZEN CRIME REPORT
Oakland Police Department
455 7th Street, Patrol Desk (1st Floor)
Oakland, Ca 94607 - 3956

Assign To AST	Police Beat	CP Beat	RD No.
Crime (Section/Subsection Code) 415 P.C.	Classification THREATS		

Is this Report for Insurance Purposes Only? ☐ Yes ☒ No

Please type or print in non-erasable black ink. When this form is completed, it will serve as an Oakland Police Crime Report which will document the incident and assist in its investigation.

If a written report has already been made, please check the SUPPLEMENTAL box on the Citizen Additional/Supplemental Information form. If you desire a Report Document Number, call (510) 238-3021 after five (5) business days.

LAST Name		First	Middle	Race	Sex	Date of Birth (Mo/Day/Yr)
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Residence		City		State	Zip	Res. Phone
[REDACTED]		Oakland		CA	94607	[REDACTED]
Business		City		State	Zip	Bus. Phone
[REDACTED]		Oakland		CA	94607	[REDACTED]
Do you know who is responsible?		If yes, Name		Address/School		City/State
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Mohassa-Boyd		[REDACTED]		Oakland
Race	Sex	Age	Physical Description (Height, Weight, Hair Color, Scars, Tattoos, etc.)			
Black	Male	33?	about 75; 7' or more 185			
Date of Incident		Day	Time	Address or Location Where Incident Occurred		
Sep. 3. 2007		Yes	About 2:00 pm	[REDACTED]		
Vehicle Involved	Yr.	Make	Model	Color	License No.	State
<input type="checkbox"/> Suspect's <input type="checkbox"/> Victim's						
Method of Entry				Point of Entry		
<input type="checkbox"/> Forced <input type="checkbox"/> Attempt <input type="checkbox"/> No Force				<input type="checkbox"/> Door <input type="checkbox"/> Roof <input type="checkbox"/> Window		
Brief Summary of Incident						
Suspect made threat on my life						

Describe What Was: ☐ Stolen ☐ Damaged ☐ Lost

Article	How Many	Model and Number	Serial Number*	Color	Value
1.					
2.	X	X	X		
3.					
4.					

*NOTE: It is VERY important to give the serial number of each item listed above.

IT IS A MISDEMEANOR TO MAKE A FALSE REPORT OF A CRIME (Sec. 148.5 Calif. Penal Code)

Signature	Date (Month/Day/Year)
[REDACTED]	9-7-07

For Departmental Use Only

Loss	Reporting Person	Investigator's Name	Serial No.
Approving Supervisor		Clearance	Date Filed

Sept 3, 2007-

Mofassa Boyd came over to my home where my older mother and I live. My mother had been helping him each month with a little money to help him to make it over the month. She had been paying his rent \$550.00 a month and when he was in school to help with bus fare \$200.00 a week. He dropped out of school so we change to \$140. week he was angry about this. the month Aug. we philly and I gave him \$800.00 for the month. He spent it before the month was out and forward \$44.00 to be paid back in Sept. he said he did not get the check. But later said he do cash it spend money. Came over to the house for \$800.00 from my mother trying to manipulate my Old Mother who can't not think things out. She has ask me and me philly askin to help with his needs. this we have been trying to do. So I ask him not to do this (manipulating my mother) And that he was taking to much money from her, and she was spending

[REDACTED]

More money on him than she get
a month and she was running out
of money. he became angry and went
into a rage I thought she was going
to jump on me so I picked up a hammer
to defend myself and got out of the
home he got up small table my mother
was by her chair. Then I thought
that I should call the police and
not get myself into trouble doing
something to him. so I picked up
the phone to call police. he then
went out of the home saying he
was going to kill me. so I thought
that I should report this.

[REDACTED]

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~~EXHIBIT~~ (C)

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

NOTICE OF PAROLE REVOCATION RIGHTS AND ACKNOWLEDGEMENT

BPT 1100

(Follows the ADA advisement and completion of the BPT 1073.)

If the charges are referred to the Board of Prison Terms this is what will happen:

- You have a right to written notice of claimed violations of parole (CDC Form 1502b).
- You have a right to all evidence that will be used against you.
- You have a right to an attorney who will be assigned to represent you at all times during the revocation process.
- You have the right to ask your attorney to request an expedited (earlier) probable cause hearing if you have evidence that is a complete defense to the charges that are the basis of the parole hold.
- Effective July 1, 2005, you have the right to a probable cause hearing with your attorney and a Deputy Commissioner of the Board of Prison Terms within 18 business days of ~~today~~ if you are in custody. You have the right to present letters, documents, and speak on your own behalf at this hearing. The reason for the probable cause hearing is for the Deputy Commissioner to determine if there is enough evidence to keep you in custody until your revocation hearing and to try to settle your case on that date. At the probable cause hearing you will also be given the opportunity to discuss and accept or reject the offer given to you by the Deputy Commissioner.
- If you are in custody, you have the right to a revocation hearing within 35 calendar days from the date the parole hold was placed and to receive written notice of the date and time of the hearing.
- You have a right to be heard in person and to present witnesses and documentary evidence in your defense at a revocation hearing.
- You have a right to confront and cross examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).
- You have a right to a neutral and detached hearing officer.
- You have a right to have your revocation hearing within 50 miles of the alleged violation.
- You have the right to subpoena witnesses in your defense to the same extent that the state can subpoena witnesses.
- You have a right to a written statement by the hearing officer as to the evidence relied on and the reasons for the decision and to receive a tape recording of the revocation hearing.

Acknowledgement

1. I have been informed of my rights listed above.
2. I know that I will meet with an attorney. My attorney will tell me all my rights and the BPT return-to-custody assessment offer.
3. I have a copy of the papers and reports checked below.

- ☒ BPT Form 1073, Notification of Americans with Disabilities Act completed today
- ☒ CDC Form 1502(b), Charge Report
- ☒ BPT Form 1100, Notice of Rights and Acknowledgement
- ☒ Blank Form BPT 1100(b), Request for Witnesses
- ☐ Other: _____

I have read (or had read to me) the information above. I have been given copies of the papers, forms, and reports listed above

Signature of Parolee

CDC Number

Date

Signature of Staff Completing the Actual Notice

Print First Initial, Last Name

Date

NAME

Boyd M.

CDC #

P05952

INST/REGION

II 7071 40

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

NOTICE AND REQUEST FOR ASSISTANCE AT PAROLE PROCEEDING

BPT 1073

PRE-INTERVIEW FILE REVIEW (STAFF ONLY)

I acknowledge that I have reviewed all relevant and reasonably available central file and/or field file information prior to first contact with the inmate/parolee involved in this parole proceeding. For revocation proceedings, this file review must include, at the minimum, a review of the CDC Form 611 (revised 05/01) or a Parolee Disability Review Sheet (PDRS) and attached documents, if any.

Print Name: E. HAMMONSign Name: [Signature]Date: 9/21/07

Identified Disabilities

☒ Mental Health Concerns (Circle One) CCCMS EOP MHC B DMH 128C dated: 4-16-01
☐ Developmental Disability (Circle One) DD1 D1A DD2 DD3 128C-2 dated: _____

☐ Physical Disability (Circle all that apply) (verified on CDC Form 1845) Dated _____

Mobility (DPW / DPO / DPM / DNM) Vision: (DPV/DNV) Hearing: (DPH / DNH) Speech: (DPS / DNS)

☐ Other Disability (that may limit access): _____ documented on _____ dated: _____

☐ Learning Disability documented on _____ dated: _____

☐ NO DISABILITIES IDENTIFIED FROM THE FILE REVIEW.

Other Potential Assistance Needs:

☐ Reading Level nm Total GPL na (If not available, note "N/A")

☐ Non-English Speaking (List language(s) inmate/parolee speaks): _____

II. INMATE/PAROLEE RIGHTS & SELF IDENTIFICATION

You have a right to receive help for your hearing. If you need help talking, reading, hearing, seeing, understanding or getting to your hearing, you have a right to that help. You have a right to receive help in meeting with your attorney.

If you do not speak English, you have a right to an interpreter. If you are deaf and use sign language, you have a right to a sign language interpreter. If you cannot read, the BPT or CDC must provide you with help to read the forms and papers. If you need special transportation, the BPT or CDC must provide it for you.

Check all that apply:

☐ I need help reading my documents.

☐ I need help understanding the procedures and forms.

☐ I need a sign language interpreter.

☐ I need a wheelchair and I ☐ do have one. ☐ do not have one.

☐ I do not speak English and need an interpreter in _____ (language)

☐ Other _____

☒ I do not need any help for my parole hearing.

☒ [Signature] CDC # P05952 Date Signed 9/21/07

Inmate/Parolee Signature

CDC #

Date Signed

III. INITIAL SERVICE OF RIGHTS (STAFF ONLY)

I have informed inmate/parolee of his/her rights and charges, if any, and have determined that he/she:

☒ Appears to understand

☐ Appears to have difficulty understanding

☐ Effective Communication Method Used: (Foreign language interpreter, sign language interpreter, read/spoke slowly, assistive device, etc.)
Additional Comments: 145 (EAD)
E HAMMON Staff Name and Title (please print)

Staff Signature

Date

IV. BPT REVIEW FOR INTERNAL USE ONLY (Non-Lifer Cases)

RECEIVED

Accommodation(s)/Assistance to be provided at hearing(s): EAD

SEP 28 2007

Staff Name and Title (please print)

Staff Signature

Date

BOYD, MCBASSA P05952 AVB907 TUCKER

NAME CDC # TYPE OF HEARING DATE OF HEARING LOCATION

MENTAL HEALTH PLACEMENT CHRONIC

Number P05952 Last Boyd First Mobassa Home N-331L Date 4/16/01 CMF

THIS INMATE HAS COMPLETED A MENTAL HEALTH EVALUATION WITH THE FOLLOWING RESULTS (check box(s)) below:

- a) ☐ Does Not Meet Criteria for Inclusion in the Mental Health Services Delivery System (MHSDS)
- b) ☒ Meets Inclusion Criteria for the MHSDS. Check Level of Care [LOC] Below.
- c) ☐ Inclusion is for Medical Necessity (Obtain Chief Psychiatrist Signature Below; Check LOC).
- d) ☐ Currently included in the MHSDS. Check new or continuing LOC below.
- C: ☐ Clinical Case Management (CCCMS) ☒ Enhanced Outpatient Program (EOP) ☐ Crisis Beds (MHCB) ☐ Inpatient DMH

Calculated GAF Psychotropic Medication Prescribed Yes ☒ No ☐

Current Behavior Alerts

Suicide ☐ Aggressive ☐ Self Injury ☐ Unpredict ☐ Other ☐

Behavior Comments:

Physician Gregg

Signature

[Signature]

Chief
Psychiatrist

CDC Psychiatric 128C

Distribution: Central File, Unit Health Record, CCI, IMHIS Coordinator, UMRN

ORIGINAL	25-44
YELLOW	BRIEFCASE
PINK	PAROLE FILE

	Column 1 (Field Unit)	Column 2 (BPH)
Parole Violation Report and Attachments:		
One (1) original and one (1) copy of the original		
If applicable, one (1) Olsonized copy of the original		
CDC 1676, Charge Sheet/Revocation Tracking/Scheduling	✓	/
CDC 1521(b), Summary of Parole Adjustment	✓	/
CDC 1244, Parole Violations Disposition	✓	/
CDC 188, Legal Status Summary	✓	/
CDCR 1521(d), Recommendation, Review, and Signature Sheet	✓	/
CDCR 1654, Parole Revocation Hearing Notice and Witness Determination of the scheduled hearing	✓	/
Supporting/Evidentiary Documents:		
One (1) original and one (1) copy of the original		
If applicable, one (1) Olsonized copy of the original	✓	/
Police Report(s)	✓	/
Lab Results		
Other Reports:		
Notice of Charges/PCH Documents:		
One (1) copy		
CDCR 1502(b), Charge Report	✓	/
BPH 1100 Notice of Right to Revocation Hearing - Acknowledgement	✓	/
BPH 1073, Notice of Request for Assistance at Parole Proceedings	✓	/
ADA Source Documents (if applicable):		
CDC 128 B, General Chrono, LDL Verification/TABE		
CDC 128 C, Chrono-Medical, Psych, Dental	✓	/
CDC 128 C-1, Reception Center Medical Clearance		
CDC 128 C-2, Chrono-Recommendation for Adaptive Support		
CDC 1845, Inmate/Parole Disability Verification		
Other:		

Complete the column by placing a check mark for the documents that are present and completed in the revocation packet. If a document is not applicable for this revocation packet i.e., lab results, mark N/A in the column.

Column 1 - Inventoried by DAPO Staff:

Field Unit Forwarding Revocation Packet	Name/Title (Printed)	Date
Oakland Unit	B. Richie PT	9-27-07

Column 2 - Inventoried by BPH Staff:

DRU Site Completing Revocation Packet Review

Name/Title (Printed) **B.P.H.**
SANTA RITA D.R.U.
(925) 551-6927

RECEIVED
Date **SEP 28 2007**

CDC Number: P05952

CDC Name (Printed): Boyd, Mob955a

243

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

PAROLEE – ATTORNEY DECISION FORM **BPT 1104(b)**

 ASSESSMENT OFFER OF: 1 months **INELIGIBLE** **ELIGIBLE** (circle one)

☒ **NOTICE ACKNOWLEDGEMENT:** I have gotten and understand (or had explained to me) all necessary documents except the following (indicate form name and description or indicate "N/A" if you got everything): _____

Select one of the five following options:

- ☐ **1. ACCEPT:** I accept the return to custody order (assessment offer) and unconditionally give up my rights to contest the charges against me or have a probable cause or full revocation hearing. I also agree to any and all special conditions of parole imposed on me by the Board of Prison Terms.
- ☐ **2. OPTIONAL WAIVER:** I accept the assessment offer and optionally give up my right to a hearing (probable cause and full revocation) at this time because local charges have been filed. I may choose to have a hearing later (within 15 days of the end of local proceedings).
- ☐ **3. I request a PROBABLE CAUSE HEARING.** I understand that the assessment offer will remain open until the conclusion of the Probable Cause Hearing.
- ☐ **4. I request an EXPEDITED PROBABLE CAUSE HEARING.** (Please describe reason for this request on separate sheet. Note, an offer of proof is required to show there is a complete defense to the charges that are the basis of the parole hold).
- ☒ **5. REJECT:** I reject the screening offer, give up my right to a probable cause hearing, and request a full revocation hearing.

☐ I intend to **admit** to the charges circled below. (Circle the appropriate charge numbers only; those not circled are presumed to be a plea of either deny or no plea):

▪ Charges I Admit : 1 2 3 4 5 6 7 8

☐ I need the following ADA and/or foreign language accommodation for my hearing: _____

☐ **WAIVERS:** I give up my right to the following: (Select all boxes that apply)

- ☐ I give up my right to call any witnesses at my full revocation hearing.
- ☐ I give up my right to call my parole agent to attend my full revocation hearing.
- ☐ I need _____ more days to prepare. I give up my right to have a timely (probable cause/full revocation) hearing. (Circle one or both).

Signature of Inmate/Parolee	<input type="checkbox"/> Inmate/Parolee refused to sign/appear (circle one or both).	Date
Printed Name and Signature of Attorney	Witness:	Date
	Telephone Number	

NAME

CDC NUMBER

INST/REGION

ISLAMIC CENTER OF ALAMEDA

901 Santa Clara Ave
ALAMEDA, CA 94501
(510) 748-9033

October 22, 2007

To Whom It May Concern:

Re: Support for Mobasa Boyd

I Mr. Musa Balde as the Imam of the Islamic Center of Alameda. I have known brother Mobasa Boyd for seven years now. He has been an exemplary man in our community. Everyone loves and respects him for his kind and gentle manners. He has been volunteering as a teacher in our school for several years now. All of our students have learned so much from him. He is indeed a role model not only to the Muslim Community but also the community at large.

If you have any questions, please do not hesitate to call me at the above number.

Sincerely,


Mr. Musa Balde

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EXHIBIT (D.)

ISLAMIC CENTER OF ALAMEDA

901 Santa Clara Ave
ALAMEDA, CA 94501
(510) 748-9033

E-filing

October 22, 2007

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(PR)

RMW

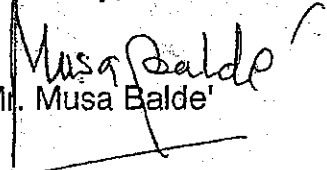
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Sincerely,


Mr. Musa Balde

Mr. Mobassa Boyd
2545 75TH AVE
Oakland, CA 94605



7006 0810 0003 9821 2285



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94102



U.S. District Court
Northern District of California
450 Golden Gate Ave
San Francisco, California 94102